Supreme Court, U. S.
FILED
JAN 7 1976
MICHAEL RODAK, JR., CLERK

No. 73-861

In the Supreme Court of the United States

OCTOBER TERM, 1975

EAST CARROLL PARISH SCHOOL BOARD AND EAST CARROLL PARISH POLICE JURY, PETITIONERS

v.

STEWART MARSHALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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QUESTION PRESENTED

The United States will discuss the following question:

Whether it is proper for a federal district court to adopt and order into effect prior to compliance with the preclearance procedures of Section 5 of the Voting Rights Act of 1965 a reapportionment plan adopted by, and submitted to it on behalf of, the local legislative body of a jurisdiction covered by the Act.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and amended by Sections 204, 206, and 405, Pub. L. 94–73, 89 Stat. 402, 404–405, provides:

> SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose

> and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and

determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

INTEREST OF THE UNITED STATES

This case involves an important question in the interpretation and administration of the Voting Rights Act of 1965. Among the responsibilities Congress has placed on the Attorney General under that Act is the authority to pass upon changes in election laws submitted under Section 5 by covered jurisdictions, and to institute suits to prevent implementation of such changes prior to compliance with the preclearance procedures of that provision. The dispositive question presented here, in our view, is whether those preclearance procedures should have been required in this case.

STATEMENT

East Carroll is a small, rural parish located in the northeast corner of Louisiana (Pet. App. 27, 45). In 1970 its population was 12,884—7,568 blacks, constituing approximately 59 percent of the population, and 5,316 whites, constituting about 41 percent of the population (Pet. App. 28). The voting age population of the parish was 54 percent black at that time.[1] In October 1971, blacks constituted 46 percent of the registered voters. 3,342 whites and 777 blacks were registered on the East Carroll voting rolls; in addi-

[1] General Population Characteristics, U.S. Dept. of Commerce, Bureau of the Census, Louisiana, 1970, p. 107.

tion, 2,122 blacks were listed by federal examiners as eligible to vote in the parish (Pet. App. 45).

Prior to the passage of the Voting Rights Act, blacks suffered from racially discriminatory practices in voting, which were "deeply engrained in the laws, policies and traditions of the State of Louisiana." *Louisiana* v. *United States,* 380 U.S. 145, 156. Various devices including "the grandfather clause," white primaries, "interpretation tests," and the "citizenship test" have been used to disfranchise blacks throughout Louisiana history. *Id.* at 147–151. From 1922 to 1962, *no* black resident of East Carroll Parish was permitted to register to vote (Pet. App. 45). Only after enactment of the Voting Rights Act of 1965, 42 U.S.C. 1973, *et seq.,* and other federal efforts to secure the vote for blacks in the South, were significant numbers of blacks in East Carroll parish enfranchised. This increase in black enfranchisement was partially due to the use of federal examiners who were sent to East Carroll Parish in the middle and late 1960's as a result of the determination of the Attorney General pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, that they were "necessary to enforce the guarantees of the Fifteenth Amendment." 30 Fed. Reg. 9971.

Prior to 1968, all parishes in Louisiana were divided into wards, and the members of the police jury[2]

[2] The police jury is the governing body of the parish. Its authority includes construction and repair of roads and bridges, clearing of waterways, levying taxes to defray parish expenses, appointment of executive officers, support of the poor, construction and maintenance of drainage canals, land use and transportation plan-

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and school board of each parish were elected by wards.[3] Each police jury was authorized to redistrict into 5 to 12 wards, but the number of members chosen from each ward was established by law according to a population formula.[4] School boards had no independent authority to apportion, but conformed to the apportionment applicable to the corresponding police juries.[5] With the increased registration of blacks during the 1960's, two blacks were elected to the 9-member police jury and one black was elected to the 9-member school board in East Carroll Parish under the ward system, prior to 1968 (Pet. App. 46).

In July 1968, the Governor of Louisiana approved enabling legislation permitting the at-large election of police juries and school boards from throughout a parish. The legislation repealed the requirement of maintaining a ward system for the election of police juries. La. Acts 1968, No. 445, codified at La. Rev. Stat. §§ 33:1221, 33:1224 (1974). School boards were authorized to reapportion themselves every ten years by districts or at-large. La. Acts 1968, No. 561, codified at La. Rev. Stat. §§ 17:71.1–17:71.6 (1974).

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ning, providing for the public health, regulating the construction of buildings, and performing other duties respecting the public health and welfare. La. Rev. Stat. § 33:1236 (1950).

[3] The statute requiring ward elections for police juries was enacted in 1940. La. Acts 1940, Extra Sess., No. 12, § 1 (formerly codified at La. Rev. Stat. § 33:1221 (1950)). A similar provision appears to have been in effect since 1894. La. Acts 1894, No. 161, Sec. 1. School board members were elected in the same manner. La. Rev. Stat. § 17–52 (1950).

[4] These provisions were formerly codified at La. Rev. Stat. §§ 33:1222–33:1224 (1950).

[5] La. Rev. Stat. § 17–52 (1950).

Approximately one week prior to the Governor's approval of the enabling legislation, the original plaintiff—a white resident of East Carroll Parish—filed a complaint contending that the apportionment of the East Carroll Police Jury and School Board did not meet one-person, one-vote requirements and requesting the district court to order reapportionment (App. 1–22). The district court ruled that the apportionment violated the Fourteenth Amendment, enjoined the upcoming primary, and ordered the Police Jury to submit to the court a reapportionment plan for the Jury and Board by October 1, 1968 (App. 41–46).

On November 18, 1968, the Police Jury adopted a reapportionment plan providing for at-large elections, but retaining ward residency requirements for candidates. By letter of November 25, the Police Jury president transmitted that plan to the district court with the request that the court "incorporate [it] in [the court's] forthcoming judgment" (App. 56). The district court incorporated that plan in its order of December 2, 1968 (App. 50–51). The only change made by the court was to extend its application to election of members of the School Board (App. 50).

Thereafter, the Attorney General of Louisiana submitted the enabling legislation to the Attorney General of the United States for review pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. By letters of June 26, 1969, and September 10, 1969, the Assistant Attorney General interposed objections to the State enabling legislation.[6] The Sep-

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[6] Those letters are appended to this brief as Appendix A and Appendix B, respectively.

tember 10 letter stated that a change from ward to at-large elections in parishes which have overall white voting age population majorities but which include wards having black voting age population majorities would have the effect of diluting actual or potential black voting strength.[7] As an example of that dilution, the letter cited the situation in East Carroll Parish.[8] On August 7, 1970, the Assistant Attorney General wrote to the president of the Police Jury stating that, in light of the prior objection to the enabling legislation,

> East Carroll Parish cannot now conduct at-large elections for school board or police jury members without violating federal law. [App. 59.]

Despite these objections, the 1969 and 1970 elections were held under the at-large plan.

The district court, on February 17, 1971, instructed the Police Jury and School Board to file reapportion-

[7] The letter stated, in part:

"Based upon the 1960 Census, we found that of the 64 parishes in Louisiana, only 5 have Negro majority voting age populations. Of the 59 parishes having white majority voting age populations, 39 have a combined total of 109 wards where the Negro population is in the majority. Thus, it is apparent that a change from ward to at-large voting in these parishes would have the effect of diluting the actual or potential voting power of the Negro inhabitants."

[8] With respect to East Carroll Parish the letter noted:

"[A]vailable statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including wards 1 and 3, Negro voters outnumber white voters. * * * According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3."

ment plans revised in accordance with the 1970 census.[9] On March 11, 1971, the Jury and Board resubmitted the at-large plan to the court (App. 60–62). Respondent Marshall—a black resident of East Carroll Parish—was permitted to intervene as a party plaintiff (App. 64). His complaint, filed on May 11, 1971, challenged the validity of the at-large plan on the grounds that it violated (1) the Fourteenth and Fifteenth Amendments by diluting black voting strength, (2) the Voting Rights Act of 1965, and (3) State law[10] (App. 68). Alternative plans were submitted to the court by the Jury and Board and by Respondent Marshall (App. 70–72, 77–82, 86–89).

On July 13, 1971, the Acting Assistant Attorney General advised the district attorney for the Sixth Judicial District, which includes East Carroll Parish, that Section 5 of the Voting Rights Act of 1965 requires the submission and clearance of reapportionment plans of police juries and school boards prior to implementation of such plans (App. 84). In a letter of July 19, 1971 to the court, the district attorney expressed the view that Section 5 submission of the reapportionment plans adopted by the Jury and Board was not required because they were to be incorporated in an order of the district court (App.

[9] The court's instructions took the form of a letter to counsel for the parties, which is appended to this brief as Appendix C. The court's action appears to have been taken *sua sponte* and the letter appears to be a form letter.

[10] The complaint in intervention alleged that the at-large apportionment was "violative of state law as modified by action of the Attorney General of the United States under Section 5 of the Voting Rights Act" (App. 65).

83). On July 22, 1971, the district attorney informed the Assistant Attorney General: "After receiving your communication, I conferred with [the district court] relative to your instructions with reference to referring the plans to your Department, and he advised that *Connor* v. *Johnson* [402 U.S. 690] * * * is controlling, and that any plan incorporated in a decree issued by him would not have to be submitted to you" (App. 94). The Jury/Board plan was not submitted to the District Court for the District of Columbia or the Attorney General.

Following a hearing, the district court found that the at-large plan was constitutional, approved it (App. 179), and subsequently incorporated it in the court's decree of August 2, 1971 (App. 95–97). The district court did not rule on the applicability of Section 5 to the Jury/Board plan.

The respondent here then appealed from the district court's judgment, raising issues of unconstitutional dilution of black voting strength and violation of Section 5. While that appeal was pending, on April 14, 1972, the Assistant Attorney General withdrew the objection to the State law permitting school boards to reapportion and adopt at-large plans, on the basis of an opinion of the Attorney General of Louisiana that that law did not relieve school boards which chose to reapportion of the responsibility of complying with constitutional requirements and submitting

their plans pursuant to Section 5.[11] Although the Attorney General has never explicitly withdrawn his objection to the statute permitting at-large elections of police jurors, he has treated subsequent submissions by police juries of at-large plans as submittable under Section 5 and has objected to at least seven of them.[12] In response to a request from the Louisiana Attorney General, the Assistant Attorney General, in a letter of April 18, 1973 (appended to this brief as Appendix E), offered to reexamine the objection to the enabling legislation if a request for reconsideration was made and "if some safeguard or assurance would be provided by the State of Louisiana that the authority granted by Act 561 could not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act." There was no subsequent assurance given.

On appeal, a panel of the court of appeals, with one judge dissenting, affirmed the decision of the district court (Pet. App. 27–41).[13] The panel held that Section 5's preclearance procedures were not applicable in this case because the plan here fell

[11] The letter of April 14, 1972, is appended to this brief as Appendix D.

[12] Hearings on Extension of the Voting Rights Act of 1965 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 599 (1975).

[13] After the appeal was filed, the district court, on motion of the intervenor, withdrew its earlier order and, by order of March 27, 1972, approved a plan reapportioning the parish by wards. The court of appeals ruled that the trial court was without jurisdiction to enter its March 27 order and proceeded to consider its order of August 2 approving the at-large plan (Pet. App. 29–30).

within the exception set forth in *Connor* v. *Johnson,* 402 U.S. 690, to those requirements (Pet. App. 31–32). Additionally, the panel held that the at-large election scheme approved for East Carroll Parish did not discriminate against the black citizens of the parish (Pet. App. 33). Judge Gewin stated in dissent, however, that the effect of the 1968 change to an at-large election scheme was to submerge black voters into the then-existing majority white registration of the parish and eliminate the possibility of a "majority of black registered voters in one or more new and impartially drawn wards * * *" (Pet. App. 39).

On rehearing *en banc,* the court of appeals reversed the decision of the panel (Pet. App. 43–79). The *en banc* court did not consider the contention regarding the applicability of Section 5 (Pet. App. 48). It held that the panel and the district court erred in concluding that the at-large scheme did not unconstitutionally dilute the vote of blacks in East Carroll Parish. The court of appeals stayed its mandate, and a petition for a writ of certiorari was filed on December 3, 1973, and granted on June 30, 1975.

ARGUMENT

I. INTRODUCTION AND SUMMARY

The authority of the federal courts to correct deprivations of voting rights protected by the Fourteenth and Fifteenth Amendments is well established. *Reynolds* v. *Sims,* 377 U.S. 533; *Gomillion* v. *Lightfoot,* 364 U.S. 339. Federal court intervention was needed in the area of State and local reapportion-

ment, because other avenues were not available for the effective redress of constitutional rights. *Reynolds* v. *Sims, supra,* 377 U.S. at 570.

With respect to Fifteenth Amendment rights, Congress has provided a specific means of protection, through the administrative and judicial procedures of Section 5 of the Voting Rights Act of 1965. Section 5 is designed, in part, to prevent abridgment of voting rights by means of reapportionment. *Georgia* v. *United States,* 411 U.S. 526.

These avenues of relief are complementary, not mutually exclusive. The instant case calls upon this Court to reconcile the specific statutory requirements of Section 5 with the proper role of the district courts in reapportionment litigation.

Reapportionment plans devised in the course of litigation under the Fourteenth or Fifteenth Amendment, or both, may originate in a variety of ways,[14] although there are three main categories: (1) a plan formulated by the State or political subdivision on its

[14] The following is a list of categories of reapportionment plans devised in the course of litigation:

1. Jurisdiction (State or political subdivision) formulates new plan on its own initiative and prior to ruling by district court that present apportionment is unconstitutional; or

2. District court rules present apportionment unconstitutional, and

(a) Jurisdiction enacts or formally adopts plan (i) without court order, or (ii) pursuant to court order to formulate plan, and (i) presents to court, or (ii) does not present to court; or

(b) Jurisdiction formulates plan and presents to court (i) without court order, or (ii) pursuant to court order to formulate plan; or

(c) Plaintiff formulates plan and presents to court (i) without court order, or (ii) pursuant to court order to formulate plan; or

own initiative, (2) a plan formulated by the State or political subdivision in response to a court order, and (3) a plan formulated by the court itself. This Court has disposed of the issue of Section 5 applicability to categories (1) and (3) by its decisions in *Connor* v. *Waller*, 421 U.S. 656, and *Connor* v. *Johnson*, 402 U.S. 690, respectively. While there has been concern that administrative problems would be created by requiring the Section 5 submission of plans formulated as a result of court order, we believe that under this Court's decision in *Connor* v. *Waller, supra,* those problems can be minimized. Unlike plans formulated by the court itself, which this Court exempted from Section 5 review in *Connor* v. *Johnson, supra,* Section 5 submission of plans formulated by covered jurisdictions does not unduly interfere with the prerogatives of the court.

The policies underlying *Connor* v. *Johnson* and *Connor* v. *Waller* provide guidance here. A full examination of the relevant considerations leads to the conclusion that Section 5 clearance is required for any plan submitted by a covered jurisdiction in reapportionment litigation, whether it has first been formally enacted or is simply proposed by the jurisdiction through counsel for adoption by the reapportionment court. A proposed plan is literally as much within Section 5 as an enacted plan, because it is a

(d) Special master formulates plan pursuant to court order; or
(e) Court formulates its own plan.

This list is intended to be illustrative, not all-inclusive. As will be discussed more fully below, we believe that for purposes of Section 5 there is essentially no difference between categories 2(a) and 2(b).

change in voting criteria which the jurisdiction "seek[s] to administer" by proposing its incorporation in the court's decree. Only plans formulated by the reapportionment court itself, or by the complainants, remain outside of Section 5, although the court may receive comments from the jurisdiction's counsel on the court's or plaintiffs' proposals. When necessary, the reapportionment court can stay its proceeding pending Section 5 clearance or grant appropriate interim relief. This approach will encourage jurisdictions to develop plans which will pass muster under Section 5, and potential problems of judicial administration can be resolved by procedures normally applied under the doctrine of primary jurisdiction.

II. THE COURTS BELOW ERRED IN CONSIDERING THE REAPPORTIONMENT PLAN OF THE EAST CARROLL PARISH POLICE JURY AND SCHOOL BOARD PRIOR TO ITS SUBMISSION AND CLEARANCE PURSUANT TO SECTION 5 OF THE VOTING RIGHTS ACT OF 1965.

A. Section 5 Affords Special Protection for Fifteenth Amendment Rights.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, provides that before implementation of any voting practice different from that in effect on November 1, 1964, which a covered jurisdiction enacts or seeks to administer, the change must be submitted for review to the District Court for the District of Columbia [15] or the Attorney

[15] Congress restricted Section 5 review to a single district court—the District Court for the District of Columbia—in order to assure uniformity of decisions. Hearings on S. 1564 before the

General. In enacting Section 5, Congress intended to offer special protection against racial discrimination in voting. Recognizing that private suits brought to enforce Fifteenth Amendment rights offered an inadequate means of protecting those rights, Section 5 was adopted to provide a more effective procedure for affording such protection. *Allen* v. *State Board of Elections,* 393 U.S. 544, 556; H.R. Rep. No. 91–397, 91st Cong., 1st Sess. 8 (1970); S. Rep. No. 94–295, 94th Cong., 1st Sess. 15 (1975).

The special protection of Section 5 is accomplished by placing on covered jurisdictions the burden of proving that new voting laws do not have the "purpose and will not have the effect of denying or abridging the right to vote on account of race or color." See *Perkins* v. *Matthews,* 400 U.S. 379, 396. Unlike the normal situation in an action brought by an individual to enforce his Fifteenth Amendment rights, the burden of proof in a Section 5 proceeding is on the covered jurisdiction. Moreover, the jurisdiction must prove the absence of discriminatory purpose *and* effect. See *Harper* v. *Levi,* 520 F. 2d 53, 71 (C.A. D.C.). This special protection is afforded only by review pursuant to Section 5.[16]

Senate Committee on the Judiciary, 89th Cong., 1st Sess., Part 1, pp. 69–73 (1965). No other district court is authorized to determine whether a voting change complies with Section 5. *Perkins* v. *Matthews*, 400 U.S. 379, 383–387.

[16] But see *Sims* v. *Amos*, 365 F. Supp. 215, 220 (M.D. Ala.), affirmed sub nom. *Wallace* v. *Sims*, 415 U.S. 902. In *Sims*, the district court ruled, citing *Connor* v. *Johnson*, 402 U.S. 690, that a

The decision of a panel of the court of appeals, in the present case, approved the district court's order despite the absence of Section 5 clearance. The court ruled that plans such as that under review "resulting from [the district court's] equitable jurisdiction over adversary proceedings are not controlled by Section 5" (Pet. App. 31). In reversing the panel decision, the *en banc* court of appeals stated "we need not consider" the applicability of Section 5 to the Jury/Board plan (Pet. App. 48), although in a footnote to that statement the court stated that "the panel's decision that *Connor* * * * govern[s] is quite appropri-

reapportionment plan devised by the Alabama State legislature, and submitted for approval in the course of an on-going reapportionment suit, did not have to be submitted pursuant to Section 5. The district court nevertheless held that the State retained (and in that case failed to meet) the burden of proving to the district court that its plan was non-discriminatory. On appeal to this Court the State officials contended that the district court had erred in imposing the burden of proof upon them. They did not, however, challenge the ruling that Section 5 was inapplicable. Thus, this Court's affirmance of the district court's decision is not a holding that a State plan submitted to a court is exempt from Section 5. Moreover, the district court in *Sims* did not have the benefit of this Court's subsequent decision in *Connor* v. *Waller*, 421 U.S. 656, discussed *infra*, pp. 22–24.

Because Section 5 represents an expression of congressional intent to impose the burden of justifying voting changes on jurisdictions with a long history of racial discrimination in the electoral process, the district court in *Sims* apparently believed that, when a reapportionment plan is proposed by a covered jurisdiction, that burden should be on the jurisdiction even if the plan is being reviewed by a local district court. We submit, however, that it is more appropriate, where feasible, to secure that protection by subjecting the plan to Section 5 procedures, which are the means chosen by Congress to achieve that end.

ate." *Id.* at 48, n. 9. In light of the considerations we shall now discuss and of this Court's recent decision in *Connor* v. *Waller, supra,* we believe that the panel's opinion reflects an incorrect interpretation of the requirements of Section 5.

B. Congress Intended Section 5 to Apply to All Changes in Voting Laws

Section 5 expresses the intent of Congress to provide a method of passing upon all changes in voting laws of covered jurisdictions. *Perkins* v. *Matthews, supra,* 400 U.S. at 396; S. Rep. No. 94–295, 94th Cong., 1st Sess. 15 (1975). There are no statutory exceptions to that rule. Congress intended that there be no exceptions, see *Allen* v. *State Board of Elections, supra,* 393 U.S. at 568, except, as shown *infra,* for the narrow exception encompassed by this Court's decision in *Connor* v. *Johnson, supra.*

Reapportionment plans are one of the principal means by which covered jurisdictions have sought to abridge the Fifteenth Amendment rights of black people. Approximately one-third of all Section 5 objections interposed by the Attorney General have been to redistrictings at the State, county, and city levels. S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975). When Congress extended the Voting Rights Act in 1970, it was fully informed of this Court's decision in *Allen* v. *State Board of Elections, supra,* which "implicitly recognized the applicability of § 5 to * * * changes arising from the reapportionment of state legislatures." *Georgia* v. *United States,* 411 U.S. 526,

533. Yet it chose not to exempt such plans from the coverage of Section 5. *Ibid.* In extending the Voting Rights Act again in 1975, Congress confirmed its intent to cover reapportionment plans. Both congressional committees which considered the extension expressed concern that redistricting to achieve compliance with one-person, one-vote standards would create an opportunity for covered jurisdictions to disenfranchise minorities. And Section 5 has, accordingly, been extended beyond 1980 to guarantee federal protection while redistrictings which result from the 1980 Census are taking place. S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975); H.R. Rep. No. 94–196, 94th Cong., 1st Sess. 10–11 (1975).

The legislative history of the 1975 extension specifically expresses the intent of Congress that Section 5 apply to reapportionment plans adopted in the course of litigation. The report of the Senate Committee which considered the extension stated that Section 5 is intended to establish

> a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia District Court. [S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975).]

Where a district court, in the course of litigation respecting the reapportionment of a governmental entity directs that entity "to adopt a new plan and present it to the court for consideration * * * the court should

defer its consideration of * * * [that plan] * * * until such time as [it has] been submitted for Section 5 review." S. Rep. No. 94–295, *supra,* at 18–19.[17]

Thus, since the Police Jury and School Board of East Carroll Parish formulated a reapportionment plan for election of members of each body, adopted that plan, and sought to administer it, that plan was governed by Section 5[18] and should not have been implemented without the prior clearance required by that section.

C. The Exception to Section 5 Encompassed by Connor v. Johnson *Does Not Apply to This Case*

If the Jury/Board plan had been implemented without court order, that action would have been illegal for failure to comply with Section 5 procedures. The question is whether, because the plan

[17] While the Senate committee expressed its intent that Section 5 apply to a reapportionment plan such as the one here under review, it did not consider it necessary to change the language of Section 5 in order to accomplish that result. This Court has stated that "subsequent legislation declaring the intent of an earlier statute is entitled to significant weight" in statutory construction. *National Labor Relations Board* v. *Bell Aerospace Co.*, 416 U.S. 267, 275; *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 380–381. Such consideration is especially appropriate where as here the congressional intent is expressed in legislation extending, without change, the earlier statutory provision, which was reenacted only five years earlier.

[18] East Carroll Parish is a covered jurisdiction within the meaning of Section 4(a) of the Act, 42 U.S.C. 1973b(a), to which the provisions of Section 5 apply. 30 Fed. Reg. 9897. And a reapportionment plan is, of course, covered by Section 5. *Georgia* v. *United States*, 411 U.S. 526. The current plan differs from the apportionment which governed the Jury and Board in 1964. See Statement pp. 5, 7, *supra.*

was submitted to a local district court in the course of a reapportionment case, that plan was brought within the one narrow exception which this Court has carved from the applicability of Section 5. We believe that exception does not apply.

In *Connor* v. *Johnson,* 402 U.S. 690, 691, this Court ruled that "[a] decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act." The question before the Court in *Johnson* was whether a reapportionment plan *formulated* and ordered into effect in an on-going reapportionment suit by a local district court was subject to Section 5 review. There, the State of Mississippi had enacted a plan which did not comply with one-person, one-vote standards, and the district court found it necessary to formulate its own interim plan to govern the upcoming elections. *Connor* v. *Johnson,* 330 F. Supp. 506 (S.D. Miss.). The "standard, practice, or procedure with respect to voting" originated with the court itself and was embodied in the court's decree. At no time was the court-formulated reapportionment plan which this Court reviewed in *Johnson* subject to Section 5, because the covered jurisdiction did not "enact or seek to administer" it within the plain meaning of the statute. The district court's plan could not have been subjected to Section 5 procedures without subjecting its decree to review by the District Court for the District of Columbia, which has no appellate jurisdiction, or by the Attorney General, which would be inappropriate.

Section 5 was directed at "States [which] had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees," *South Carolina* v. *Katzenbach,* 383 U.S. 301, 335; it was not directed at federal court decrees. Therefore, in order to preserve the integrity of the courts' orders from review by another district court or by an executive agency, this Court interpreted Section 5 to exempt court-formulated plans from its ambit. 402 U.S. at 695 (Black, J., dissenting).[19]

Connor v. *Johnson* did not mean, however, that covered jurisdictions could escape from the requirements of preclearance imposed by Section 5 simply because their voting procedures were challenged in an on-going reapportionment suit. This was made clear by the Court's decision in a later phase of the same litigation, *Connor* v. *Waller,* 421 U.S. 656.

After further proceedings,[20] the Mississippi legislature enacted a reapportionment plan in 1973 which was again challenged as unconstitutional. While this challenge was pending, the State legislature adopted a

[19] Congress has since endorsed this exemption: "The one exception where Section 5 review would not ordinarily be available is where the court, because of exigent circumstances, actually fashions the plan itself instead of relying on a plan presented by a litigant. This is the limited meaning of the 'court decree' exception recognized in *Connor* v. *Johnson*, 402 U.S. 690 (1971)." S. Rep. No. 94-295, 94th Cong., 1st Sess. 19 (1975).

[20] See *Connor* v. *Johnson*, 330 F. Supp. 521 (S.D. Miss.); *Connor* v. *Williams*, 404 U.S. 549.

completely new reapportionment plan in April 1975. The reapportionment court then directed the plaintiffs to file a new amended complaint addressing the 1975 reapportionment acts. In expedited proceedings, the court held that, with the exception of one county, the new plan the State had adopted satisfied the Fourteenth and Fifteenth Amendments. *Connor* v. *Waller,* 396 F. Supp. 1308 (S.D. Miss.).

On direct appeal this Court reversed *per curiam*. *Connor* v. *Waller,* 421 U.S. 656. It held that the State's reapportionment Acts, as submitted to the reapportionment court in the course of the litigation, which had been in progress since 1965 (396 F. Supp. at 1309), must be cleared under Section 5 in order to be effective as laws, and that the reapportionment court should not have considered the racial discrimination claims prior to clearance. It stated (421 U.S. at 656):

> Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination.

Thus, a district court having jurisdiction of reapportionment litigation involving a covered jurisdiction may not dispose of a claim that a new reapportionment plan enacted by that jurisdiction "den[ies] or abridg[es] the right to vote on account of race or color"[21] if that plan has not been cleared under

[21] Section 5, 42 U.S.C. 1973c. In addition, Section 5 now includes the guarantees of Section 4(f)(2), as added, 89 Stat. 401, barring covered jurisdictions from denying or abridging the right of language minorities to vote. 89 Stat. 402.

Section 5. Since Section 5 requires the jurisdiction to obtain clearance prior to approval by the reapportionment court, no decree incorporating or endorsing the jurisdiction's enactment would be subject to Section 5 review under *Connor* v. *Waller*. That decision is thus consistent with the rule of *Connor* v. *Johnson* that court decrees are not subject to Section 5.

It is clear under *Connor* v. *Waller* that if the plans involved in the present case were enacted by the Police Jury and the School Board prior to submission to the district court, they "are not now and will not be effective as laws until and unless cleared pursuant to § 5" (421 U.S. at 656). Assuming for argument that neither plan was formally enacted prior to its submission to the district court,[22] and recognizing that they were submitted as a proposal to the district court in response to the court's request (see Statement, *supra,* pp. 8–9), we submit that Section 5 clearance is nevertheless required before the district court could approve them.

Section 5 by its terms applies when covered jurisdictions either "enact" voting criteria—the situation in *Connor* v. *Waller*—or "seek to administer" such criteria. Submission by a covered jurisdiction of a

[22] The Police Jury plan was, however, adopted in 1968 and submitted for court approval without Section 5 clearance. The School Board plan was the result of the district court's 1968 order approving the Police Jury plan and extending its at-large aspects to the Board. See Statement, *supra*, p. 7. The plans were resubmitted in 1971 pursuant to resolution of each body, in response to the court's request. See App. 60–62.

plan for proposed adoption by a reapportionment court is a means by which the jurisdiction "seek[s] to administer" that plan. It makes no difference under the language of Section 5, therefore, whether the jurisdiction has formally enacted its plan; has informally authorized its counsel to submit it to the reapportionment court, subject to subsequent enactment if approved; or proposes through counsel that it be effectuated without enactment by incorporation into the court's decree. Unless the jurisdiction's plan has been cleared under Section 5, it is a nullity which can neither take effect by its own force nor be entertained by a reapportionment court for proposed incorporation in its decree. This was Congress' express understanding and intent when it recently reenacted Section 5. S. Rep. No. 94–295, 94th Cong., 1st Sess. 19 (1975), quoted n. 19, *supra,* p. 22.

Where an apportionment plan is challenged and struck down in the course of litigation, the district court should, if possible, give the jurisdiction an opportunity to exercise its legislative responsibility to formulate a plan which meets constitutional standards.[23] If, however, the jurisdiction is unable or unwilling to produce a plan and obtain clearance under

[23] "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and * * * judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Connor* v. *Williams*, 404 U.S. 549, 552, n. 4; *Chapman* v. *Meier*, 420 U.S. 1, 27.

Section 5, the district court may formulate a plan of its own or adopt a plan proposed by the plaintiff.[24] Of course, plans proposed by the plaintiff in reapportionment litigation, or formulated by the court itself because the jurisdiction is unable or unwilling to adopt an acceptable plan of its own (*Connor* v. *Johnson, supra*), remain outside of Section 5. Nor should the reapportionment court be prevented from receiving comments from the jurisdiction as to tentative plans formulated by the court or proposed by the plaintiff, or from having the assistance of any technical information or expertise which the jurisdiction may be able to offer. In sum, the jurisdiction retains its full procedural rights as a litigant. But, as a substantive matter, Section 5 bars it from adopting or proposing a plan without first obtaining clearance thereunder.

If such clearance is sought and obtained from the Attorney General, the reapportionment court may consider the Attorney General's lack of objection along with other factors bearing on the constitutionality of the plan. If the Attorney General objects, or if the jurisdiction prefers not to submit the plan to the Department of Justice, then the District Court for the District of Columbia must find, in a suit by the jurisdiction against the Attorney General, that it has carried its burden of showing that its proposed plan does

[24] We recognize the possibility of collusive suits by plaintiffs in fact acting at the behest of the jurisdiction. We assume, however, that the district courts will be alert to guard against any abuse of their process. A plan in fact proposed by the jurisdiction but presented collusively through the plaintiff would be subject to Section 5.

not abridge voting rights on account of race, color or language.[25] Only then may constitutional challenges based on racial or language discrimination be decided by the reapportionment court.

Such an approach, we submit, is consistent with the limited role courts should play in reapportionment, advances the purposes of Section 5, and reconciles the primary jurisdiction created by Section 5 with the responsibilities of reapportionment courts. First, it would encourage covered jurisdictions to take the initiative in developing plans which will pass muster under Section 5 and under the one-person/one-vote standard of the Fourteenth Amendment. See *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Connor* v. *Williams*, 404 U.S. 549, 552, n. 4; *Chapman* v. *Meier*, 420 U.S. 1, 27. If jurisdictions are not permitted to propose plans to the district courts without Section 5 clearance, they will not be tempted to seek advisory opinions from reapportionment courts with respect to the racial aspects of reapportionment. In addition, because jurisdictions which do not formulate plans for submission under Section 5 would be foreclosed from proposing their own plan to the reapportionment

[25] If the District of Columbia court finds the plan to have a racially discriminatory purpose or effect, then not only does Section 5 prevent the reapportionment court from approving the plan, but the jurisdiction is estopped from relitigating the matter in that court. *Blonder-Tongue Labs.* v. *University Foundation*, 402 U.S. 313. If that court sustains the plan, the plaintiff may continue to assert his claims of racial discrimination in the reapportionment court unless he was a party in the District of Columbia proceeding. *Ibid.*

court, and would be limited to commenting on court-proposed or plaintiff-proposed plans, they would find it seriously disadvantageous to fail to initiate their own plans for Section 5 clearance. Few political jurisdictions would be likely to surrender the right to propose their own reapportionment plan in order to evade the requirements of Section 5.

Indeed, it would be anomalous to impose the special protections of Section 5 on those jurisdictions which, on their own initiative, adopt reapportionment plans in an effort to meet constitutional standards, while exempting those which reapportion only in response to constitutional challenges. Such an interpretation of Section 5 might have the untoward consequence of encouraging covered jurisdictions to be derelict in reapportioning or correcting Fourteenth or Fifteenth Amendment violations in their apportionment plans. If a covered jurisdiction were confronted with the choice of either acting to adopt a plan which corrects constitutional infirmities, subject to Section 5's special burden of proof, or not acting until ordered to do so by a court in the context of a privately-initiated lawsuit, thus permitting the covered jurisdiction to avoid the responsibility of Section 5 submission, the jurisdiction might well choose the latter course. Then the special protection which Congress intended to apply to all changes in voting laws formulated by covered jurisdictions—which they either "enact" or otherwise "seek to administer"—would be lost.

Finally, claims that problems of judicial administration require the exclusion from Section 5 review of reapportionment plans formulated by covered jurisdictions for submission in on-going reapportionment litigation do not, in our view, establish a basis for limiting *Connor* v. *Waller, supra.* Such problems conceivably could arise because reapportionment litigation may involve claims under both the Fourteenth and Fifteenth Amendments. As we have explained (*supra,* pp. 24–26), *Connor* v. *Waller* in our view bars the district courts from approving for implementation proposed plans submitted to them by covered jurisdictions without prior clearance under Section 5 procedures; but it did not disturb the district courts' powers to act upon Fourteenth Amendment complaints, *i.e.,* complaints of existing non-compliance with one-person, one-vote standards. As this Court specified in *Connor* v. *Waller,* 421 U.S. 656–657, the reapportionment court retains the authority to require, in appropriate circumstances, that a forthcoming election be conducted "pursuant to a court-ordered reapportionment plan that complies with this Court's decisions * * *." But see n. 19, *supra,* p. 22. But the local district court is to stay consideration of all constitutional issues concerning the covered jurisdiction's own proposed plan pending Section 5 clearance, much as judicial or administrative proceedings are stayed pending proceedings on particular issues in another tribunal with primary jurisdiction. See, *e.g., California* v. *Federal Power Commission,* 369 U.S. 482, 490

(administrative action should have been stayed pending judicial proceeding); *Ricci* v. *Chicago Mercantile Exchange,* 409 U.S. 289; *Carnation Co.* v. *Pacific Westbound Conference,* 383 U.S. 213, 222–224 (judicial proceedings stayed pending administrative action).

Indeed, the Voting Rights Act itself, and especially its extensions (see n. 17, *supra,* p. 20), represent a balancing by Congress of possible administrative difficulties against the need for adherence to the procedures of Section 5. A requirement that reapportionment courts not pass on proposals of covered jurisdictions until they obtain Section 5 clearance comports with the legislative intent.[26]

[26] Prior to this Court's decision in *Conner* v. *Waller*, *supra*, the Attorney General had taken the position that when a reapportionment plan was being litigated with respect to a Fifteenth Amendment claim he would defer to the judicial determination regarding racial discrimination. See *Georgia* v. *United States*, 411 U.S. 526, 534–535 n. 6. In light of *Connor* v. *Waller*, however, that policy is inappropriate. A recent decision of the United States Court of Appeals for the District of Columbia Circuit has invalidated the Attorney General's prior policy of deferral. *Harper* v. *Levi*, 520 F. 2d 53 (C.A. D.C.). Our pre-*Waller* policy had proved somewhat impractical. For example, in the instant case, the 1968 litigation involved no Fifteenth Amendment claim; there was no pending Fifteenth Amendment claim when the at-large scheme was refiled with the court in 1971 pursuant to the court's request; it would be anomalous if the subsequent filing of the complaint in intervention seeking to enforce the Voting Rights Act and the Fifteenth Amendment were to be treated as divesting the Attorney General and the District Court for the District of Columbia of Section 5 authority or responsibility.

CONCLUSION

Read in light of the clear language of the statute, its legislative history, and the policy underlying its enactment, Section 5 is applicable to this case. The district court therefore erred in ordering into effect the Jury/Board plan without awaiting its prior clearance pursuant to Section 5.[27] In these circumstances, the Court need not consider whether the plan is invalid under the Fifteenth Amendment on the ground that it dilutes black voting strength in East Carroll Parish. Rather, the judgment should be vacated and the case should be remanded with instructions to stay further proceedings (except for the possibility of interim relief) pending Section 5 clearance.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys.

JANUARY 1976.

[27] Indeed, if, contrary to our contention, the plan in this case were to be regarded as a court-ordered plan not subject to Section 5, then it apparently fails to comply with the preference for single-member districts over multi-member districts which this Court has repeatedly required of court-ordered reapportionments. See *Chapman* v. *Meier*, 420 U.S. 1, 17–19, and cases there cited.

APPENDIX A

JUNE 26, 1969.

Hon. JACK P. F. GREMILLION,
Attorney General of Louisiana,
State Capitol Building,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reference to Act 445 and Act 561 enacted by the Louisiana State Legislature at the 1968 Regular Session, copies of which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

We have carefully examined and considered this material. These amendments place in the hands of existing police juries and school boards broad discretion in redrawing the boundaries of police jury wards and establishing special school board election districts, and in determining the manner of electing members to their particular bodies. On the basis of the information before me, I have concluded that the new procedures that both amendments provide for have had and, if widely implemented, will have the effect of discriminating against Negro voters on account of their race, and of denying to them an effective voice in the selection of police jury and school board members. In the absence of information showing the contrary, I must, on behalf of the Attorney General, interpose objections to the implementation of Act 445 and Act 561.

Should you wish to present justification for the changes in election procedures provided for by the

amendments, or propose procedures which will insure against racially discriminatory effects in their implementation, the Attorney General will gladly reconsider his position. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that such changes in election and voting procedures do not have the purpose and will not have the effect of denying and abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

APPENDIX B

SEPTEMBER 10, 1969.

Hon. JACK P. F. GREMILLION,
Attorney General of Louisiana,
State Capitol Building,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reply to your letter of July 1, 1969, in which you requested that we delineate our specific objections to the implementation of Acts 445 and 561 of the 1968 Regular Session of the Louisiana Legislature.

Our examination of this legislation discloses that Act 445 removes the previous requirement for the creation of a minimum number of police jury wards within a parish, thus permitting a police jury to redistrict a parish into one parish-wide ward. Therefore, we construe this Act as permitting a change from ward to at-large voting in police jury elections. Act 561 specifically provides for a change to at-large voting for school board members.

In the case of *Fairley* v. *Patterson,* 393 U.S. 544 (1969) involving a change from district to at-large voting for county supervisors in Mississippi, the Supreme Court held that such a change constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965. In its opinion, the Court stated as follows:

> The right to vote can be affected by a dilution of voting power as well as by an absolute pro-

> hibition on casting a ballot. * * * Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting.

Based upon the 1960 Census, we found that of the 64 parishes in Louisiana, only 5 have Negro majority voting age populations. Of the 59 parishes having white majority voting age populations, 34 have a combined total of 109 wards where the Negro population is in the majority. Thus, it is apparent that a change from ward to at-large voting in these parishes would have the effect of diluting the actual or potential voting power of the Negro inhabitants.

An example of such dilution has taken place in East Carroll Parish. Our available statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including wards 1 and 3, Negro voters out-number white voters. Prior to a recent reapportionment suit (*Zimmer* v. *McKeithen*, Civil Action No. 13927, W. D., La., December 2, 1968), all police jury and school board members were elected by the voters of their respective wards. According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3.

On November 18, 1968, the East Carroll Parish Police Jury, in special session, adopted a resolution which provided that all new police jurors be elected at-large throughout the parish. This resolution was incorporated in the reapportionment order and ex-

tended thereby to include all new school board members. Since this decision, two Negro candidates for school board offices, one from ward 1 and the other from ward 3, have been defeated in at-large elections.

We further note that under the provisions of Act 561, any concentration of Negro voting power would be subject to dilution by the creation of special school board election districts, the boundaries of which need have no relation to existing or future ward boundaries.

Since neither of the Acts contain any safeguards against abuses, and in view of the opportunities afforded by the Acts to discriminate against Negro voters, we must reaffirm our objections to their implementation. However, we reiterate that should you wish to present justification for the changes or propose procedures which will insure against racially discriminatory effects in their implementation, the Attorney General will gladly reconsider his position.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

APPENDIX C

[Text of Letter dated February 17, 1971 to counsel for parties—T. L. Clarke, W. B. Ragland, and McIntosh, Hesten & Gilfoil]

GENTLEMEN: It is my understanding that the final census figures for the respective wards in each Parish now have been issued by the Bureau of Census and are obtainable.

Accordingly, each Police Jury and School Board should submit a plan for reapportionment within thirty days from this date, based upon such figures, accompanied by supporting briefs; and attorneys for plaintiffs will be allowed fifteen days thereafter within which to file objections, if any, to the proposed plans, accompanied by supporting briefs.

Please act accordingly.

BEN C. DAWKINS, JR.,
Chief Judge, United States
District Court for the
Western District of Louisiana.

APPENDIX D

DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL,
Washington, D.C., 20530.
APRIL 14, 1972.

Mr. JOHN F. WARD, Jr.,
Burton, Roberts & Ward,
Attorneys at Law,
206 Louisiana Avenue,
Baton Rouge, La.

DEAR MR. WARD: This is in reply to your letter of February 22, 1972, in which you request that the Attorney General withdraw his objection, interposed pursuant to the Voting Rights Act of 1965, to Act 561 of the 1968 Louisiana Legislature, as amended.

We have reviewed and reanalyzed the matter in light of the opinion of the Attorney General of Louisiana which you forwarded with your request. As I read that opinion, it interprets Act 561, as amended, to incorporate the requirement that local boards, in reapportioning themselves, must comply with Supreme Court decisions regarding reapportionment and non-discrimination in the elective process and that such reapportionment plans must be submitted pursuant to Section 5 of the Voting Rights Act prior to implementation. Based upon this interpretation of the Act, the Attorney General will withdraw his objection provided the interpretation of the State Attorney is disseminated to all school boards in the state. Therefore, I would appreciate your advising me as soon as

this has been done and of the manner in which the communication was made.

Sincerely,

DAVID L. NORMAN,
Assistant Attorney General,
Civil Rights Division.

APPENDIX E

APRIL 18, 1973.

HON. WILLIAM J. GUSTE, JR.
Attorney General,
State of Louisiana,
Department of Justice,
Post Office Box 44005,
Baton Rouge, La.

Attention: Kenneth C. DeJean, Chief, Civil Division).

DEAR MR. ATTORNEY GENERAL: This is to acknowledge receipt of your letter dated March 14, 1973 by this Department on March 26, 1973.

Members of my staff are presently making a preliminary analysis of the 149 acts specified in your letter to determine, for each of the acts, whether the information we presently have is sufficient to enable us to properly evaluate the act under Section 5 or, alternatively, whether the information we have is insufficient to allow such an evaluation of the act, in which case it will be necessary for us to request additional information relevant to the act as provided by the procedural guidelines for the administration of Section 5, 28 C.F.R. § 51.18, a copy of which is enclosed.

We note that on page 2 of your March 14 letter you request that we treat as submitted under Section 5, and accordingly consider, any acts to which Section 5 applies which we may discover in the volumes you forwarded to us, in addition to those acts enumerated in your letter. We believe that submission of enactments under Section 5 may not be perfected unless the legislation in question is specifically identified and

particularly submitted for Section 5 review. See *Allen* v. *State Board of Elections* 393 U.S. 544, 571; *Clayton* v. *North Carolina State Board of Elections* 317 F. Supp. 915, 919 (E.D. N.C. 1970). We may not, therefore, unilaterally consider and evaluate pursuant to Section 5 legislation which may be contained in the volumes of state enactments but which are not individually designated in your letter of submission. We will, however, notify you of any such enactments we may discover, and, afford you the opportunity to submit the acts for review by the Attorney General or to initiate a suit for declaratory judgment in the United States District Court for the District of Columbia, as provided by Section 5.

In addition, you request in your letter of March 14 that we reconsider our objection to "Act 445 of 1969". Your letter dated March 21 seeks reconsideration of "Act 445 of 1970". It may be that you have reference to Act 445 enacted by the Louisiana legislature at the 1968 regular session, and to which the Attorney General objected on June 26, 1969.

The procedure for requesting reconsideration is set out in the Section 5 guidelines, 28 C.F.R. §51.23. Should you wish to present information not previously available to you regarding Act 445, as addressed in the guidelines, we will be pleased to entertain your request. We note, however, that Attorney General Gremillion corresponded with us regarding our objection of June 26, 1969 in his letter of July 1, 1969; we responded in our letter dated September 10, 1969. In this connection, we also received a letter dated January 21, 1971, from Mr. John F. Ward, Jr., which indicates that a carbon copy was sent to Attorney General Gremillion, offering an explanation of the

facts surrounding the enactment of Act 445, the effect in Louisiana of our objection, and arguments to support a withdrawal of the objection.

As you may know, on April 14, 1972 the Attorney General withdrew his objection to Act 561, a companion bill to Act 445 involving school districts in Louisiana, also enacted in the 1968 Regular Session of the Louisiana Legislature. Prior to our letter of April 14, 1972, we had suggested that Act 561 would not continue to be objectionable if some safeguard or assurance would be provided by the State of Louisiana that the authority granted by Act 561 could not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act. Such a safeguard was provided in a letter dated February 21, 1972 from Attorney General Gremillion to Mr. Ward. A copy of that letter, and of our letter of April 14, 1972, is enclosed. Should you take similar action concerning Act 445 we will, upon our receipt of such information, re-examine our position with regard to Act 445 in light of your action.

If we can assist you in gathering information necessary to make your submission complete or if you wish to discuss the matter, please do not hesitate to call on me or my staff. Robert R. Rush, the attorney assigned to this matter, can be reached by calling 202–739–3882.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

U.S. GOVERNMENT PRINTING OFFICE: 1976